

# PATENT COOPERATION TREATY

# PCT

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## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 4531PTWO/er	<b>FOR FURTHER ACTION</b>		See Form PCT/PEA/416
International application No. PCT/EP2004/053005	International filing date (day/month/year) 18.11.2004	Priority date (day/month/year) 19.11.2003	
International Patent Classification (IPC) or national classification and IPC B61L5/10			
Applicant GE TRANSPORTATION SYSTEMS S.P.A. et al.			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input checked="" type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand  16.09.2005		Date of completion of this report  29.12.2005	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tlx 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer  Massalski, M  Telephone No. +49 89 2399-2034 	

**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/EP2004/053005

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**Box No. I Basis of the report**

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1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
  - ☐ publication of the international application (under Rule 12.4)
  - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

**Description, Pages**

1-8 as originally filed

**Claims, Numbers**

1-22 as originally filed

**Drawings, Sheets**

1/7-7/7 as originally filed

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/EP2004/053005

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**Box No. II Priority**

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1. ☐ This report has been established as if no priority had been claimed due to the failure to furnish within the prescribed time limit the requested:
- ☐ copy of the earlier application whose priority has been claimed (Rule 66.7(a)).
  - ☐ translation of the earlier application whose priority has been claimed (Rule 66.7(b)).
2. ☒ This report has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rule 64.1). Thus for the purposes of this report, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	3,5-7,9,11,13,14,18-21
	No: Claims	1,2,4,8,10,12,15-17,22
Inventive step (IS)	Yes: Claims	3,13,14
	No: Claims	1,2,4-12,15-22
Industrial applicability (IA)	Yes: Claims	1-22
	No: Claims	

2. Citations and explanations (Rule 70.7):

**see separate sheet**

**Re Item V.**

1 Reference can be made to the following documents:

D1: EP-A-1 245 469 (GE TRANSP SYSTEMS S P A) 2 October 2002  
(2002-10-02)

D2: WO 02/055360 A (VAE EISENBAHNSYSTEME GMBH; VAE  
AKTIENGESELLSCHAFT; SCHNEDL, KARL; ACHL) 18 July 2002  
(2002-07-18)

2 INDEPENDENT CLAIM 1

2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

Document D1 discloses (the references in parentheses applying to this document):

"A machine for railway switching applications [0001], comprising:

- a fixed casing (1);
- a control rod (4) adapted for sliding movement between two alternative positions relative to said casing (1), said control rod (4) being connectable to at least one movable switching element (A1) of a railway switching application;
- a fixed plate (2) mounted to said casing (1), said fixed plate having at least one fixed seat (24); and
- at least one operating pin (42 and column 3, line 36 to 40) slidably positioned in said control rod (4), said operating pin being adapted to selectively enter said at least one fixed seat (24) to lock (column 3, lines 1 to 8) said control rod (4) in either of said two positions relative to said casing (1)."

Due to the broad wording of this claim - "said control rod being connectable to at least one movable switching element" - this claim can be read in a novelty destroying way on the switch machine of D1 which also has a control rod which is connected to one movable switching element even if the description of the application differs from D1. In further national and/or regional proceedings a clarification would be necessary there to overcome this novelty objection.

**3 INDEPENDENT CLAIM 17**

- 3.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 17 is not new in the sense of Article 33(2) PCT.

Document D2 discloses (the references in parentheses applying to this document):

"A machine for selective movement of the movable V-point of a railway moving point frog assembly (page 1, line 4-12), comprising:

- a fixed casing adapted to function as a railroad tie beneath the rails of intersecting sections of railroad tracks and the moving point frog (1) assembly between them (Fig. 1);
- a control rod (6) mounted within said fixed casing, said control rod being adapted for sliding movement between two alternative positions relative to said fixed casing (page 6, line 16-22), said control rod being connectable to a movable V-point (1) of a railway moving point frog assembly located above said fixed casing."

So the wording of this claim can also be read in a novelty destroying way on the machine for moving the frog of D2, even if the description of the application differs from D2.

**4 DEPENDENT CLAIMS 2, 4-12, 15, 16, 18-22**

Dependent claims 2, 4-12, 15, 16, 18-22 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT).

**5 DEPENDENT CLAIMS 3, 13, 14**

The combination of the features of dependent claims 3, 13, 14 are neither known from, nor rendered obvious by, the available prior art. Therefore they seem to meet the requirements of the PCT in respect of novelty and inventive step (Article 33(2) and (3) PCT).